

## FERPA and H1N1 Disclosures

There are **no** Family Educational Rights and Privacy Act (FERPA) implications from reporting the number of absences from a school when personally identifiable information about a student is not released. This summary addresses only those questions LEAs (nonpublic elementary and secondary schools are not subject to FERPA) might have regarding the release of personally identifiable information regarding a student.

As a general rule, a parent (or eligible student) must provide active (i.e., written) consent before a local education agency (LEA) discloses personally identifiable information from the student's education records unless a statutory exception applies. A sample consent form is provided below. The sample consent form and the FAQs all are from guidance from the U.S.

Education Department that appears on the USED website at <http://www.ed.gov/policy/gen/guid/fpco/pdf/ferpa-h1n1.pdf>.

NOTE: At this time, officials with the Iowa Department of Public Health indicate that they do not intend to ask for personally identifiable information regarding students. Because of the changing nature of H1N1, we are providing this information so schools will have the information but in hopes that schools do not need to refer to this information.

### Sample Consent Form for Disclosures by [name of School District] to [name of Health Department]

The [SCHOOL DISTRICT] will seek to keep students healthy and safe this fall and through the school year. As part of this effort, we will be collaborating with the [LOCAL] Health Department to help track student absences. This effort will enable us to identify unusual clusters of disease and provide information to the school community, and particularly students at high risk, about illnesses. These efforts will also help the health community assess the spread of disease and potentially allocate scarce medical resources.

Pursuant to the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, parental consent is required before personally identifiable information from your child's education records may be disclosed to [the health department], absent a health or safety emergency or another exception to the requirement of consent. If your child is age 18 or over, he or she is an "eligible student" and has to provide consent for disclosures of information from his or her education records.

Please note that information about your child may be shared with the Health Department without your consent, *if* school officials determine that there is a significant and articulable threat to the health or safety of your child or other individuals and that the Health Department needs to know the information to protect the health or safety of your child or other individuals.

I, \_\_\_\_\_, hereby agree to allow [SCHOOL DISTRICT NAME] to disclose [specify records] on \_\_\_\_\_ [Student Name] to \_\_\_\_\_ [name of Health Department] for the purpose of [state purpose of disclosure].

You may withdraw your consent to share this information at any time. This request should be submitted in writing and signed.

\_\_\_\_\_  
Signature of Parent, Guardian, or Eligible Student

\_\_\_\_\_  
Date

#### **Q1. Are there exceptions to FERPA that would permit a school to disclose personally identifiable information on affected students without consent in the case of an H1N1 outbreak?**

A: Yes. FERPA permits school officials to disclose, without consent, personally identifiable information from education records to appropriate parties in connection with an emergency, if knowledge of that information is necessary to protect the health or safety of the student or other individuals. This exception is limited to the period of the emergency. The school district must determine that there is an articulable and significant threat to the health or safety of the student or other individuals and that certain parties need personally identifiable information from education records to protect the health or safety of the student or other individuals.

#### **Q2. Does the Public Health Emergency declared by the Secretary of Health and Human Services (HHS) on October 1, 2009, constitute a "health or safety emergency"?**

A: Yes. The Department considers the declaration made by the HHS Secretary on October 1, 2009, that there is a public health emergency involving the H1N1 flu outbreak as serving as a rational basis for a school to determine that an emergency exists, so long as there is a *current outbreak* of H1N1 in the particular school or school district.

**Q3. May health records or other education records maintained by a school be shared, without consent, with the public health department in the absence of a declared Public Health Emergency if school officials believe that H1N1 poses a serious risk to the health or safety of an individual student?**

A: Yes. If school officials, taking into account the totality of the circumstances, determine that an **articulable and significant** threat exists to the health or safety of a student or other individuals, they may disclose information to the appropriate officials, without consent, who need the information to protect the health or safety of the student or other individuals. Public health department officials may be considered “appropriate parties” under this exception, even in the absence of a formally declared health emergency. Typically public health officials and trained medical personnel are among the types of appropriate parties to whom information may be disclosed under FERPA’s health or safety emergency provision.

**Q4. May schools disclose without consent the names, addresses, and phone numbers of absent students to the health department so that the health department may contact their parents in order to assess the students’ illnesses?**

A: FERPA only permits the nonconsensual disclosure of contact information of absent students to the public health department in specific circumstances, such as in connection with a health or safety emergency or in connection with a subpoena if the school makes a reasonable effort to notify the parents or eligible students of the subpoena before complying with it.

**Q5. If a school includes a student’s name as “directory information,” why does the school still need written consent to disclose the name of the student to appropriate parties?**

A: While FERPA generally permits the nonconsensual disclosure of properly designated “directory information” (name, address, phone number, grade level, etc.) on those students whose parents have not opted out, it does not permit a school to disclose “directory information” on students that is linked to non-directory information. For instance, a school may not disclose “directory information” on all students who are receiving special education services or those who have been absent from school.

**Q6. If the school determines that a health or safety emergency exists, may it disclose without consent personally identifiable information on students to the media?**

A: No. FERPA only permits disclosures of personally identifiable information from students’ education records under the health or safety emergency provision to “appropriate parties” (such as public health officials) whose knowledge of the information is necessary to protect the health or safety of students or other individuals in the school community. While the media may have a role in alerting the community of an outbreak, they are not “appropriate parties” under FERPA’s health or safety emergency provision because they generally do not have a role in protecting individual students or other individuals at the school. “Appropriate parties” in this context are normally parties that could provide specific medical or safety attention, such as public health and law enforcement officials.

**Q7. May the school identify a particular child as having the H1N1 flu virus to parents of other students in the school?**

A: In most cases, it is sufficient to report the fact that a child in the school (or class) has been determined to have the H1N1 flu virus, rather than specifically identify the student who is infected. Classroom notification is an effective method of informing parents of an illness in the classroom. For settings in which parents are primarily doing drop-offs and pick-ups, posting signs on the doors may be effective. In other settings, sending home or e-mailing a notification may also be effective. These methods serve to notify parents of a potential risk, which may be particularly important for children who are vulnerable to infection, and to alert parents to look for symptoms in their own children. Absent a health or safety emergency, school officials may not disclose to parents of other students information about a particular student without first securing consent. There may be situations during a health or safety emergency, however, in which schools may determine that parents of students are appropriate parties to whom to disclose the identity of a student infected with H1N1. For example, school officials may determine that it is appropriate to disclose the identity of a student with H1N1 to parents of other students if parents need to know this information to take appropriate action to protect the health or safety of their children. In this situation, parents may need to have this information in order to take appropriate actions to ensure the health or safety of their child, especially parents who have children who are at high risk of developing H1N1 complications or with health challenges. School officials should make the determination whether a disclosure of the student’s name is necessary to protect the health or safety of the student or other individuals or whether a general notice is sufficient. Please note that nothing in FERPA prevents schools from telling parents and students that a specific teacher or other school official has H1N1 because FERPA protects the privacy of students’ education records, not records on school officials.

**Q8. Is the school required to record disclosures of information submitted to the public health department or other outside parties, even in connection with a health or safety emergency?**

A: Yes. FERPA generally requires that schools maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student. Moreover, when making a disclosure under the health or safety emergency provision in FERPA, schools are specifically required to record the articulable and significant threat to the health or safety of a student or other individuals that formed the basis for the disclosure and the parties to whom the school disclosed the information. The record must be maintained with the education records of each student as long as the records are maintained.